VIRGINIA LAW REGISTER

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The Albemarle Bar, XVII.

Oscar Reierson was born in Copenhagen, Denmark, October 29th, 1837. His father came to Texas when Mr. Reierson was 18 months old and he grew up in that State. He came to Virginia in 1858, and after studying a year at Bloomfield Academy in Albemarle County, entered the University of Virginia. In July, 1862, he enlisted in Captain George T. Ferneyhough's Independent Cavalry Company, which subsequently was incorporated in White's Independent Thirty-fifth Battalion. Always full of life and energy, on one accasion, while his command was on the Potomac, Reierson and a young friend put on civilian's clothes and ran the blockade into Baltimore, where they spent two days living on the fat of the land. They narrowly escaped discovery but finally rejoined their command with a stock of needles and pins and other small articles well nigh unobtainable in the Confederacy.

After coming to the bar at Charlottesville, Mr. Reierson entered into partnership with Angus R. Blakey, Esq., a firm that did a very large collection business in addition to a fine practice. Mr. Reierson was an unusually excellent business lawyer, of fine intellect and a most delightful companion and raconteur. In 18— he moved to Atlanta to go into business with the firm of Flannagan, Abell & Company. After some years he returned to Charlottesville and was secretary and treasurer of the Monticello Wine Company and resumed the practice of law. He married a daughter of B. C. Flannagan of Charlottesville, who with two daughters survives him.

He died on May 10th, 1913, at the home of his daughter, Mrs. Poindexter Drane, in Louisville, Kentucky.

William Lynn Cochran was born in Charlottesville, Virginia, in May, 1838, the son of John and Margaret Lynn Lewis Coch-

ran. He was educated in private schools and at the University of Virginia, where he graduated in law after taking the academic course. He had a white swelling which made one leg shorter than the other, but when the Civil War broke out he at once volunteered for any service the Government would give him. He was given a position in the quartermaster's department and served during the entire war, being commissioned Major before the end of the war. After the war he began the practice of law in Charlottesville and formed a partnership with Mason Gordon, which continued until his death in September, 1875. He was Commissioner of Accounts for Albemarle County and an excellent officer. In 1868 he was elected Mayor of Charlottesville and remained in that office until his death. His practice was mainly a chancery one. A man of the most genial manners, full of fun, he was exceedingly popular and his comparatively early death was much lamented. He never married.

Colonel Bennett Taylor was born in the County of Jefferson—then a part of the old Commonwealth of Virginia—in 1836. He was a son of P. C. R. Taylor and Patsy Jefferson Randolph, his mother being a great grand-daughter of Thomas Jefferson. He was taught in private schools and entered the University of Virginia during the sessions of 1853-54-55-56-57 and 58, taking an academic course and then law. At the outbreak of the Civil War he entered the Albemarle Rifles, Company B, of the 19th Virginia Regiment, and at the reorganization was elected Captain of another Company. He served for two years with great gallantry and with such ability that he was promoted to the rank of Lieutenant Colonel of the 19th Virginia Regiment just prior to Gettysburg. As such Lt. Colonel he led the regiment in Pickett's charge and in that charge was so seriously wounded, that his life was despaired of, but he recovered and returned to service until the surrender.

After the Civil War he removed to Albemarle County, the home of his father, and began the practice of law, being subsequently elected to the position of Clerk of the Circuit Court of Albemarle County, to which position he was re-elected twice, resigning, however, in the midst of his last term and moving out of the County to the residence of one of his sons. He died on the 4th day of August 1898—not quite sixty-two years after his birth.

Colonel Taylor was a gentleman of the highest principles and honor and unselfish devotion to duty and native land. He was a man of great modesty, of the most unflinching courage, and a lawyer of ability. Like a great many of the lawyers of that day he cared very little for the Common Law practice but devoted himself almost entirely to the equity side of the court. He gave eminent satisfaction as Clerk of the Circuit Court and won the warm affection, esteem and regard of the judges and lawyers at the Bar.

Jefferson Randolph Taylor, a brother of Col. Bennett Taylor, was born in 1841 in Albemarle County, Virginia. He attended private schools and was at the University of Virginia in the sessions of 1858 and 1859, and while there showed a peculiar ability in the study of Greek and Latin. At the beginning of the Civil War he entered the Confederate States Army and served as a private soldier during the whole of the war. He taught school for a short time after the Civil War closed and then commenced the practice of the law in Charlottesville, Virginia, where he practiced mainly upon the chancery side of the court until 1889, when he entered the Protestant Episcopal Seminary at Alexandria, Virginia, from which he graduated three years later and entered the Episcopal ministry. In this ministry he continued until his death on April 15th, 1919.

Mr. Taylor was a man of the loftiest character. Of the greatest modesty and diffidence, he rarely ever attempted court work but as an office lawyer and chancery practitioner he was excellent. In his work in the ministry of the gospel he was successful and very much beloved by the parishes he had in charge. To those who knew him intimately he represented all that was kindly and generous in a gentleman of intellect and culture. He was a scholar and in the short while that he taught school made an enviable record as an instructor and guide of youth.

James B. Gilmer was born in Charlottesville, Virginia, in 1840, the son of the distinguished Thomas Walker Gilmer, Governor of Virginia, Member of Congress, and Secretary of the Navy under Tyler. Mr. Gilmer after education at private schools entered the University of Virginia in the session of 1860-61, but when the Civil War broke out he immediately entered the service and served as a private during the whole of that war. He en-

tered the University again in the session of 1865-66 and studied law and soon thereafter commenced the practice of the law in Charlottesville, Virginia. He took a most excellent standing amongst the young lawyers who entered with him, but in 1875 determined to move to the State of Texas. The writer well remembers a farewell dinner given to Mr. Gilmer by the members of the bar on the eve of his going to Texas. This tribute to his ability and good fellowship was largely attended and he left his native state with the love and best wishes of his fellow-practitioners. He first settled in Galveston but later moved to Waco, where a large number of Virginia people had settled. Here he married and here resided to the day of his death some ten years ago.

Mr. Gilmer was a man of decided versatility of talent, full of wit and humor and probably one of the best raconteurs of his time. It is said that he once called on a young lady who was visiting Charlottesville and gave her a most graphic account of a trip to Europe. Meeting some people afterwards she remarked that she felt almost like she had been on a trip to England, France and Italy after hearing Mr. Gilmer describe his travels; that he gave almost an actual photograph of the places he had visited, and described the history and literature of those countries in a way that simply enthralled her. She was very much amazed to learn that New York City was the nearest point to Europe that Mr. Gilmer had ever been, and when she taxed him with his prevarication he laughingly asked if she had not enjoyed his talk as much as if he had visited all the places in question, which she had to admit.

Mr. Gilmer practiced his profession in Texas until his death.

William Oswald Fry was born in Madison County, Virginia in 1835. He attended private schools until the outbreak of the Civil War, when he entered the Confederate States Army as Captain of an infantry company from his native county. He was a direct descendant of Joshua Fry, Colonel of Washington's Regiment in Braddock's Army, and was in every way worthy of his distinguished ancestor.

Mr. Fry attended the University of Virginia in 1866-67 and returning to his native county was elected a member of the Virginia Legislature. He began the practice of the law and prac-

ticed with signal success in his native county until he was invited to Charlottesville to become the law partner of Angus R. Blakey. He qualified at the Albemarle Bar in 1875 and enjoyed a large practice until his death in 1889. He was a profound lawyer, a speaker of strength and ability, and a gentleman of the purest and highest character.

Captain Fry married soon after the Civil War and was survived by his wife. He never had any children.

Does the Rule of Stare Decisis Any Longer Apply in the Supreme Court of the United States?

This might have appeared some time ago a very absurd question but in view of several late decisions of the Supreme Court it does seem as if it is not as foolish as it appears. Four cases decided at the present term are it seems to us startling in their effect. The first is the case of *United States* v. *Thompson.* This was a case in which a writ of prohibition was prayed in three cases, to prevent the United States from exercising jurisdiction in a proceedings *in rem* for a collision that occurred while the vessels libelled were owned absolutely or *pro hac vice* by the United States and employed in the public service. The instant case decided that neither the United States nor a vessel owned by it absolutely or *pro hac vice* was liable to suit for maritime torts committed by that vessel while employed in the public service in war time.

The earliest case on the subject was the case of the *Siren,* 7 Wall. 152. The *Siren,* while in charge of a prize master and crew, having been taken in prize by the United States, ran into the port of New York and sank the sloop *Harper.* The collision was regarded by the court as the fault of the *Siren.* She was condemned as a prize and sold and the proceeds deposited with the Assistant Treasurer of the United States. The owners of the *Harper* asserted a claim upon her and her proceeds for the damages sustained by the collision. The district court rejected the claim; this action was reversed by the Supreme Court of the United States. This case was commented on in the *Davis,* 10 Wall. 15-20. It was there said that the well supported doctrine of the case is that proceedings *in rem* to enforce a lien against

property of the United States are only forbidden in cases where in order to sustain the proceedings the possession of the United States must be invaded under the process of the court. And in *Workman* v. *New York,* 170 U. S. 552, probably the greatest Chief Justice of the United States since the days of Marshall—Chief Justice White—delivering the opinion of the court after an exhaustive review of the case, such as he generally gave, said, "It results that in maritime law the public nature of the services upon which a vessel is engaged at the time of the commission of a maritime tort affords no immunity from liability in a court of admiralty, where the court has jurisdiction." This case is now absolutely and entirely reversed in the instant case in which Mr. Justice McKenna, Day and Clarke dissent, Mr. Justice McReynolds not sitting in the case. Mr. Justice Holmes, delivered the opinion of the court, some of his language being somewhat Bostonese, saying—and exactly what he means we are frank to say we do not thoroughly comprehend—"There is no mystic over law to which even the United States must bow." And again, "Legal obligations which exist but cannot be enforced are ghosts which are seen in the law but which are elusive to the grasp." Mr. Justice McKenna delivers an exceedingly strong dissenting opinion, in which Day and Clarke concur. The opinion is very forcible and the Judge says, "The question (i. e., what is the law as to colliding vessels) I venture to say, is unequivocally answered in a number of decisions in this court, if they be taken at their word, and why should they not be? That they have masqueraded in a double sense cannot be assumed; that they have successfully justified implications adverse to their meaning would be a matter of wonder." He says again, in view of the fact that the action is against the vessel and not against the owner, that he "rejects absolutely that because the Government is exempt from suit that it may not be accused of fault. Accountability for wrong is one thing; the wrong is another." But I do not have to beat about in general reasoning; I may appeal to the authority of the *Siren,* 7 Wall. 154, and the cases that have approved and followed it. A gloss is attempted to be put upon it, which we think is unjustified and inaccurate, unless, indeed, it can be asserted that the writer of the opinion did not know the meaning of the words he used and that the members of the court who concurred with him

were equally deficient in understanding. And their insensibility to what the words conveyed had no excuse. A dissenting justice trying to bring their comprehensive import to understanding, proclaimed indeed that the words had the extent and consequence that the court now says was not intended nor accomplished." This dissenting justice was Mr. Justice Nelson, and in regard to that dissenting opinion Mr. Justice McKenna says, "The basis of his dissent was the same as the basis of the opinion of the court in the present cases but not so epigrammatically expressed." * * * "And again I repeat that in view of these extracts from Mr. Justice Nelson's dissent, misapprehension of its opinion by the court is not conceivable nor carelessness of utterance. Yet the opinion in the present cases practically so asserts, and in effect regards Mr. Justice Nelson's dissent as the law of the *Siren* and not that which the court pronounces. The court decided that the vessel was the offending thing and though it could not be reached in the hands of the Government this inability to enforce the claim against the vessel was not inconsistent with its existence. The unavoidable deduction is that in such situation the enforcement of a claim is suspended only and when the vessel passes from the hands of the Government, as the offending vessels have in the case at bar, they and all claims and equities in regard to them may be enforced." And the dissenting Justice thus concludes: "Therefore I cannot refrain from saying that it is strange that notwithstanding the language of the *Siren,* its understanding and acceptance in many cases in this court, the enforcement of its operation at circuit and district, it should now be declared erroneous. The cases at bar would seem to be cases for the application of the maxim of *stare decisis* which ought to have force enough to resist a change based on the finesse of reasoning or directed by the possible accomplishment of a theoretical correctness."

But even a more direct reversal of itself is to be found in the case of *Terrall* v. *Burke Construction Company,* in which the court goes directly back upon itself and overrules the cases of *Doyle* v. *Continental Insurance Company,* 94 U. S. 535; *Secretary Mutual Life Insurance Company* v. *Prewitt,* 202 U. S. 246, and says expressly that "The views of the minority judges in those cases have now become the law of the court." This case now holds that a state cannot revoke a license to a foreign cor-

poration to do business within the state, whether its business be state or interstate, merely because it brings an original suit in a federal court sitting in that state or removes to that court a suit brought against it in the state court.

And again, in the case of *Cornetti* v. *Moore,* Mr. Justice McReynolds dissenting, the Supreme Court holds that under the Volstead Act liquors acquired before the passage of that act and in bonded warehouses does not permit the removal of such liquors to the respective dwellings of the owners for lawful use, and in fact practically confiscates such liquors. These cases, in the opinion of Mr. Justice McReynolds, dissenting, and in our humble judgment, seem to be in direct conflict with *Street* v. *Lincoln Safe Deposit Company,* 254 U. S. 88, and we think the dissenting justice is clearly right when he says, "I think the reasoning of that opinion is bad; but it has been adopted and the construction which it placed upon the act should be adhered to or frankly overruled. The effort to distinguish the present case from the earlier one is but toying with the immaterial."

The last case, which has just been reported, will attract even greater attention from the profession. This reverses what we thought was the well settled rule in the Supreme Court of the United States as to what is ordinarily known as the *Turntable Cases.* As is well known to the profession, from 1873 up to this decision, which was rendered March 27th, 1922, the Supreme Court of the United States applied what has been designated as the "Humane Doctrine." Quite differently the courts of Massachusetts have stood at the head of the other group, applying what has been designated as a "hard doctrine," the "Draconian Doctrine". Now Mr. Justice Holmes, delivering the opinion, adopts the Massachusetts rule, reversing the former decisions of the court. In this case two children went along an open road, unfenced, and into a pool of poisonous water and died of the poison. The court holds that infants have no greater rights to go upon other peoples' land than adults and that there can be no general duty on the part of a land owner to keep his land safe for children or even free from hidden dangers if he has not directly or by implication invited or licensed them to go there, and that roads across a premises do not amount to an invitation from the landowner to children to go upon the land. This is certainly a most

remarkable statement. We always thought that an open road was more than an invitation—in fact that it was a right, unless there was some notice to the contrary.

In view of these cases are we not correct in asking the question as to whether the rule of *stare decisis* any longer applies in the Supreme Court of the United States?

Street Railways. When a Person Ceases to Be a Passenger. Negligence and Proximate Cause.

It is said that when some one spoke to Lincoln of Grant's intemperate habits he remarked that he would like to find the brand of whiskey Grant drank, so that he could send a barrel or two of the same kind to some of his other generals. Rumors have been afloat that Judge Burks of our Supreme Court of Appeals has been in very bad health. When one reads his masterly opinion in *Virginia Railway & Power Company* v. *Dressler,* handed down March 16th, one is tempted to wish that the Judge's brand of ill health might be widely disseminated through the United States in many of the courts thereof. It exhibits much labor, careful reasoning and will be read with interest and profit.

Mrs. Dressler who was on a Hull street car, was going to transfer at First and Broad Streets. The conductor on the car upon which Mrs. Dressler was a passenger gave her a transfer without explanation or suggestion that the transfer was not what she desired or could not be used for the trip desired. She got off at 14th Street without examining her transfers. She then walked to the eastern side of 14th Street and waited for her sisters. They then walked along the sidewalk on 14th Street towards Main until they reached the curb of Main Street and tried to cross Main Street to the side where she intended to board the west bound Broad and Main Street car. No car for those streets was standing for passengers to board at 14th and Main, but a car was coming in sight some considerable distance east of 14th Street. Mrs. Dressler walked ahead, a sister and friend behind her. They were going to take the car they usually took at 14th and Main. The car which she just left had gotten on the Main Street track and, as she testified, obstructed completely her view and that of her companions. They were about five feet

from the track they were going to cross, when they looked west and saw a Hull Street car rounding a curve out of 14th Street into Main. The motorman on this Hull Street car looked west and saw car No. 138 west of 12th Street and before it reached 13th he realized it was running at a very high rate of speed and he reversed his car and backed its front end off the track he was on, just far enough to get out of the way of car No. 138, which dashed by at forty or fifty miles an hour and ran into and struck the plaintiff, who was then about a car's length east of the Hull Street car and almost across the Main Street track. She was badly injured and brought suit and recovered seventy-five hundred dollars. She claimed she was a passenger and the Street Car Company denied this: 1st. Because she was attempting to transfer at a place not a transfer point; 2nd, because at the time of the injury she was a mere pedestrian, walking along the public street over which the defendant had no control.

The first defense Judge Burks holds was properly left to the jury, the evidence being conflicting. The second defense the court held was a question for the court, not for the jury. There was no dispute as to the facts, except as to whether the plaintiff was guilty of contributory negligence. The question as to whether she was a passenger or not was for the court alone.

The learned Judge then goes into an exhaustive and clear discussion of the authorities upon this question, which is exceedingly valuable as showing under what circumstances a passenger with a transfer may be considered a passenger after having alighted from a car. Our space will not permit us to give even short extracts from this opinion. Suffice it to say that henceforth in Virginia this case will be authority for the proposition that when a person holding a transfer has alighted from the car on which he is a passenger and reaches a place of safety the relationship of passenger and carrier ceases and the street car company owes no other duty to such a person than it owes to any other pedestrian crossing its tracks. The case was reversed on account of the error in the trial court submitting to the jury the question as to whether Mrs. Dressler was a passenger, but the case remanded for the sole purpose of having a jury impanelled to determine whether Mrs. Dressler was free from negligence, had sustained damage to the amount of seventy-five hundred dollars and the injury was proximately caused by the negli-

gence of the defendant. All this being answered in the affirmative the trial court should enter judgment in favor of the plaintiff against the defendant for seventy-five hundred dollars and interest. Otherwise judgment was to be entered for the defendant. This was done in pursuance of Section 6365 of the Code and is another proof of the value of that section.

The Work of the Last General Assembly of Special Interest to Lawyers.

We, as well as the entire profession of Virginia, owe a debt of thanks to Mr. C. H. Morrisette, Director of the State Legislative Reference Bureau, for the privilege of publishing his address delivered to the Legal Club and Bar Association of Lynchburg, May 2, 1922. If anything would be needed to justify the Legislative Reference Bureau, this paper would be sufficient. It is not only admirably prepared but concise, and will enable the lawyer to quickly find the changes made by the last Legislature in the statute law of the land.

Declaratory Judgment Act.

It gives us very great pleasure to say that at the session of the General Assembly just adjourned an act was passed making declaratory judgments permissible. The scope of the act is as broad as the English law, and the language of it, for the most part, is intentionally copied from the English law. The value of this is apparent because the profession will have the benefit of the English cases in construing it, and similar acts have been adopted by five or six American states, so that we will not only have the benefit of the English cases, but the cases in these several states. This is a step which has been urgently advocated by the American Bar Association and in 1919 was advocated by the Virginia Bar Association, and we hope in the course of a number or so of the REGISTER to speak more at length of this act. The profession owes its thanks to the zealous work of Mr. L. S. Epps, Mr. Joseph W. Hurt, and Mr. L. W. Ozlin, and they were most materially aided by Senator Julian Gunn, of Henrico.